BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

SEABOARD FINANCE COMPANY
OF OXNARD AND OTHERS
(Petitioners-Appellants)
(See Appendix A)

PRECEDENT
TAX DECISION
No. P-T-19
Cases Nos. T-67-22
and T-67-23

Employer Account No. (See Appendix A)

SEABOARD FINANCE COMPANY
OF PHOENIX
(Petitioner-Appellant)

Case No. T-67-24

Employer Account No.

DEPARTMENT OF EMPLOYMENT
(Respondent)

The seventy-eight corporations listed in Appendix "A" have appealed from that portion of the referee's consolidated decision relating to Referee's Cases Nos. LA-T-1281 and LA-T-1292. The Seaboard Finance Company of Phoenix, Arizona has appealed from that portion of the referee's consolidated decision relating to Referee Case No. LA-T-1300. The appellants and the respondent Department of Employment have presented oral argument to us in support of their positions on these appeals.

In Case No. LA-T-1291 the referee denied a joint petition for reassessment filed by the seventy-eight corporations. In this petition each corporation asked for reassessment of a particular individual assessment which the Department of Employment made against it on July 28, 1965 for the period and in the amount set forth after its name in Appendix "A". The appeal from the denial of this petition is now designated as Appeals Board Case No. T-67-22.

In Case No. LA-T-1292 the referee denied a petition for review which he deemed to be before him under the provisions of Unemployment Insurance Code section 1179.5

as in effect on July 30, 1965. On that date, the Seaboard Finance Company paid to the Department of Employment under protest the total sum of $8,442.55. This amount included the sum of $1,579.50 which this company paid to the department as the total amount of contributions, interest, and penalties assessed against all of the seventy-eight corporations on July 28, 1965. The department and the referee recognized this payment of $1,579.50 as a claim for refund deemed denied by the director in accordance with the provisions of code section 1179.5, and likewise under the provisions of that section further recognized the petition for reassessment as being deemed also a petition to review the denial of the claim. The appeal from the referee's denial of the deemed petition is now designated as Appeals Board Case No. T-67-23.

In Case No. LA-T-1300 the referee denied a petition for review of the department's denial on August 5, 1965 of a claim for refund in the amount of $6,863.05. This amount was exactly equal to that portion of the $8,442.55 payment made by Seaboard Finance Company in excess of the amount assessed against the seventy-eight corporations. At the request of the Seaboard Finance Company, it was applied by the department in payment under protest of a tax obligation in this aggregate amount voluntarily reported to the department on July 30, 1965 by an employing unit designated as the Seaboard Finance Company of Phoenix, Arizona for each calendar quarter within the period extending from April 1, 1962 through December 31, 1964. The appeal from the referee's denial of this petition is now designated as Appeals Board Case No. T-67-24.

The Seaboard Finance Company is not named as a petitioner in the various petitions. It was, however, named as a party in the department's answer and treated as such by the referee throughout the consolidated proceedings.

STATEMENT OF FACTS

During the period under review, each of the 78 corporations listed in Appendix "A" existed as a separate legal entity organized under the laws of this state. Each corporation had its principal office at the same location at 818 West Seventh Street in Los Angeles. Each operated in a particular locality of its own within this

state under the common business name of Seaboard Finance Company, making small loans to individuals in the same manner.

During this same period, the registered employer, Seaboard Finance Company of Phoenix, Arizona, consisted of a group of some 47 corporations (not individually identified in the record before us), each corporation existing as a separate legal entity organized under the laws of some place other than California. Each of these 47 corporations also had its headquarters office at the same location in Los Angeles as did the 78 California corporations. Each of the corporations operated in a particular locality of its own outside of this state under the common business name of Seaboard Finance Company, making small loans to individuals in the same manner as did the 78 California corporations.

The evidence before us further reflects that during the period under review there were also 375 other corporations each similarly existing as a separate legal entity organized under the laws of some place other than this state. Each of these 375 corporations also had its headquarters at the same location in Los Angeles as did the 78 California corporations listed in Appendix "A" and the 47 other corporations grouped together as the Seaboard Finance Company of Phoenix, Arizona. Each of these 375 corporations operated in a particular locality of its own outside of California under the common business name of Seaboard Finance Company, making small loans to individuals in the same manner as did the 125 corporations previously described.

There was, in addition, at least one more corporation that had its headquarters office at this same location in Los Angeles. This was the Seaboard Finance Company, which existed as a separate legal entity organized under the laws of the State of Delaware, and was qualified to do business in California. This corporation operated approximately 300 branch offices in particular localities under the common business name of Seaboard Finance Company, making small loans to individuals in the same manner as did the 500 corporations previously mentioned.

This Delaware corporation, however, occupied a rather unique and central position in the group in that it was the sole owner of all of the capital stock of each of the other 500 corporations. It was also the sole source of all of borrowed funds from which each of the other 500 corporations made their small loans to their individual customers. It was also the only corporation which directly paid any remuneration to the seven individuals whose salary payments are the subject of dispute in these consolidated proceedings.

The record before us does not identify the individual directors of this parent corporation. It does identify that the same three individuals, Allan Weidman, Edwin Johnson, and Wallace Merryman, were the sole directors of each of the 500 subsidiary corporations. These are three of the seven individuals whose salary payments are involved in the assessment.

Allan Weidman was the president of the parent corporation, and he, likewise, held the office of president of each of the 500 subsidiary corporations. Edwin Johnson was the secretary of the parent corporation, and he, likewise, held the office of secretary of each of the 500 subsidiary corporations. Wallace Merryman was the treasurer of the parent corporation, and he, likewise, held the office of treasurer of each of the 500 subsidiary corporations.

The parent corporation also had four other officers. They were: Ulmer Lide, the vice-president; William Broch, the assistant treasurer; Owen Metzler, the controller; and Robert N. Lux, the chief counsel. Each of the 500 subsidiary corporations also had four other officers. Without exception, each of these four individuals occupied the same position in each corporation.

These seven officers were in general charge of the managerial activities of all of the corporations. Their symmetrical positions in each were utilized to provide a managerial unity that embraced all, but without any indication of any fraud, injustice, or inequity to any person arising out of the interlocking relationships. Evidences of this managerial unity may be observed in the common pattern of operation of this group of corporations referred to in the aggregate in the record as the "company."

Each office of the company, whether operated directly by the parent corporation or by one of the subsidiaries, was operated in a similar manner. In local charge was a branch manager. Under him there was a record keeper and a varying number of clerks depending upon the size of the office.

A number of offices in a region were grouped together for operational purposes under the overall supervision of a regional manager. The regions in turn were formed into areas which were placed under the overall supervision of an area vice-president. Final authority rested with the president of the company and his advisers at the headquarters office.

The subsidiaries formed an integral part of this managerial structure in the same way as did the branches of the parent corporation. They were organized as separate corporations for other purposes such as qualification for a loan license in certain states requiring local incorporation for such. Various other business, financial, and tax purposes have also played a part in the establishment of this organizational policy.

Each office, whether operated directly by the parent corporation or by one of the subsidiaries, was furnished with the same set of manuals detailing the policies of the company. These manuals were revised periodically at the headquarters office and were intended to provide for the uniform conduct of the company's business operations. The record identifies that there was a Personnel Manual, an Operations Manual, an Accounting Manual, a Payroll Manual, and possibly others.

Each office within a particular state charged the same rates of interest on the loans that it made. This charge, however, varied between states because of the necessity of abiding by rates established by State Banking Commissions. Policy on interest rate charges was established by the president of the company and his advisers at the headquarters office.

Each office prepared its own payroll. It then forwarded its payroll journal to the headquarters office

in Los Angeles. That office prepared all payroll reports. There was a common vacation policy throughout the organization. Policy decisions in regard to vacations were made by the president and his advisers in Los Angeles.

Retirement benefits were also uniform throughout the company. From time to time, managers and assistant managers were transferred from one office to another. This was done from the viewpoint of the organization as a whole without regard to separate corporate structures.

The seven individuals who served as the officers of each of the corporations did not receive any direct remuneration from any of the 500 subsidiaries for the services they rendered. At the first directors' meeting of each subsidiary corporation, its board of directors adopted the following resolution which was identical in each case:

> "Resolved that until further action of the board of directors, all of the officers elected at this meeting shall serve as officers without compensation as such and the contract of employment created by said election shall be terminable upon notice by either party."

Thereafter at each separate annual meeting of each of the 500 corporations, its respective board of directors readopted this identical resolution.

The direct remuneration paid by the parent corporation to each of these seven officers became a part of its total operational and administrative expenses. In addition to such salaries, this category of expenses also included such items as rent, heat and light for the executive office building in Los Angeles, certain depreciation items, stationery and supplies, various traveling expenses, and some 22 other items. The traveling expenses included those of officers who traveled to meetings with Seaboard employees, or with other finance companies.

By intercorporate bookkeeping transactions (involving no direct transfers of cash), a portion of these

total operational and administrative expenses (including the remuneration of these seven officers) was allocated to each of the 500 subsidiary corporations. The particular portion allocated to each such corporation bore the same ratio to the total of these expenses as did the accounts receivable of that corporation to the total accounts receivable of the company (i.e., the combined total of the parent corporation and its 500 subsidiaries). After such allocation, the parent corporation was left bearing only its own proportion of such expenses in its own income account.

The parent corporation reported and paid unemployment insurance contributions on the salaries of the seven officers in question. It reported under its own account number and paid at the tax rate assigned to it by the department. It did this upon the premise that there was but one employer of these seven individuals.

The department was dissatisfied with this reporting. It viewed each subsidiary corporation as actually being a separate employer of each officer to the extent of the portion of the salary allocated to it. Accordingly the department assessed each of the 78 California subsidiary corporations upon the basis of the proportion of the salaries of the seven officers which was included in the amount of the parent corporation's operational and administrative expenses allocated to the assessed subsidiary.

The department was about to do the same with the out-of-state subsidiary corporations as soon as their identity could be determined, and it could be established which oneshad received an allocation of California wages in an amount sufficient to consider them California employers. At this point, the company paid under protest the amount that the department would have assessed against 47 such subsidiary corporations which it registered with the department as a single employer under the name of Seaboard Finance Company of Phoenix, Arizona. It then filed claim for refund of the protested payment to contest the department's viewpoint.

The effect of fractionalizing the employment relationships of the seven highly paid company officers among numerous corporations is to increase the overall

amount of each officer's salary that is subject to unemployment insurance taxes. This is because each employer (rather than one) then pays on the amount of each officer's salary allocated to it up to the maximum amount subject to tax. This in turn results in an increase in the overall tax liability of the company with virtually no increase in risk to the Unemployment Fund upon potential benefit claims by these officers.

Upon this appeal, particularly, the petitioners stress the principle of unity of enterprise as supporting their position that there is only one "employing unit" that is the employer of the seven company officers in question. In the alternative, they urge that if this principle does not apply, then the employment relationship of these seven individuals would be solely with the parent corporation and none other. Moreover, they contend that the imposition of the tax in accordance with the department's view is an unlawful burden on interstate commerce beyond the power or jurisdiction of this state; and that the rule requiring the petitioners to bear the burden of proving that no tax is due is a violation of due process of law. They also point to certain specific provisions of the Unemployment Insurance Code which they assert either limit or preclude the imposition of the tax in question.

REASONS FOR DECISION

The key to the resolution of the controversy presented by these appeals lies in the answer to the question:

> Was there (for unemployment insurance tax purposes) but one employer of the seven company officers, or did they simultaneously have many separate employers?

There were, of course, many separate corporations involved in the rendition of the services of these officers. These corporations were closely related to each other by common bonds of ownership and control, but the record before us does not indicate that their close interrelationships ever resulted in any fraud, injustice, or inequity to any person. Under such

circumstances, we are not privileged to disregard the separate existence of each of these many corporations as a legal person in its own right. Erkenbrecher v. Grant (1921), 187 Cal. 7 at page 9, 200 Pac. 641 at page 642; Wenban Estate, Inc. v. Hewlett (1924), 193 Cal. 675 at page 696, 227 Pac. 723 at page 731; California Employment Commission v. Butte County Rice Growers Association (1944), 25 Cal. 2d 624 at pages 636 and 637, 154 P. 2d 892 at page 898; Evelyn, Incorporated v. California Employment Stabilization Commission (1957), 48 Cal. 2d 588 at pages 590 and 591, 311 P. 2d 500 at page 502.

Accordingly, we proceed on the basis that there are some 126 or more different legal persons, each directly interested in and to be affected by our answer to the stated question. In terms of their substantive and procedural rights as separate persons we must recognize and distinguish each as an individual. At the same time, we are also privileged to observe how as separate persons they may have grouped themselves together in ways that people do when they associate for common or related purposes, such as the carrying on of business activities in which they become employers of others.

For unemployment insurance purposes, the word "employer" is a statutorily defined term. The Unemployment Insurance Code does not refer to an employer as being a legal entity, but as an "employing unit" which has and does certain additional things. Specifically, code section 675 states that:

> "'Employer' means any employing unit, which for some portion of a day, has within the current calendar year or had within the preceding calendar year in employment one or more individuals and pays wages for employment in excess of one hundred dollars ($100) during any calendar quarter." (underscoring added)

According to this definition, every employer is, first of all, an "employing unit." If a legal entity becomes an "employer," it is its character as an

"employing unit" that makes it such. It is not the mere fact of legal entity that does so.

The concept of an "employing unit" is derived from Unemployment Insurance Code section 135. Essentially, it refers to any individual or type of organization which, since the inception of the unemployment insurance program, has had in its employ any individual performing services for it in this state. Separate establishments of the same individual or type of organization are not separate "employing units."

It is readily apparent from the examples set forth in code section 135 that an "employing unit" is not necessarily a legal entity. In addition to such, these examples include aggregations such as joint ventures, partnerships, associations, or joint stock companies; special capacities such as receivers, trustees, and personal representatives; special agencies of government; and even mere "res" such as estates or trusts. The essential thing is that (except in the case of an individual) an "employing unit" must be a type of organization which has a business unity as an enterprise. Karlson v. Murphy (1944), 387 Ill. 436 at pages 448 and 449, 56 N.E. 2d 839 at pages 844 and 845; American Screw Products Company v. Unemployment Compensation Commission (1945), 311 Mich. 440 at page 445, 18 N.W. 2d 886 at page 888, 159 A.L.R. 1195 at page 1197; Cohen v. District Unemployment Compensation Board (1948), 167 Fed. 2d 883.

This idea of unity of enterprise is not set forth directly in the text of code section 135. Rather it has developed gradually out of the interpretation of that section (and its predecessor section 8.5 in the former Unemployment Insurance Act) by the appellate courts of this state. Its implicit presence in these sections is best recognized when coupled with an understanding of the series of court decisions which brought about this development.

In 1940 Robert and James Ransohoff were co-partners in a business enterprise known as Ransohoff's which they equally owned and jointly managed in San Francisco. Without otherwise changing the ownership or operation of their business, they decided to change its legal form from that of a partnership to that of a corporation. This they did on August 1, 1940, without interruption in the continuity of their business and in a manner hardly apparent to their customers and the public.

The California Employment Commission believed that the Ransohoff partnership and corporation were two separate employing units. On this basis, it sought to collect employment taxes on the first $3,000 paid by each to the employees of this business. It was prevented from doing so by a decision of the Appellate Department of the San Francisco Superior Court which held that the only change was one of form and not of substance; that this was not a real change as contemplated by the law; and that for unemployment insurance purposes, the corporation and the partnership were the same employing unit. California Employment Commission v. Ransohoff's Inc. (1944), San Francisco Superior Court Appellate Department No. 1618, reported in 1944 Compilation of California Court Decisions Involving the California Unemployment Insurance Act at page 25.

About a year later, a similar problem arose when a general partnership of two individuals was changed into a limited partnership with the same two individuals as general partners and two other persons as limited partners. In Barrett and Hilp v. California Employment Commission (1945), San Francisco Superior Court No. 341890, summarized in 1945 Compilation of California Court Decisions Involving the California Unemployment Insurance Act at page 2, the court determined that the general and limited partnerships were but a single employing unit. There was no change in employing unit when the limited partners were admitted.

Then came the problem of a personal representative who completed the contracts entered into by a deceased individual without initiating a new enterprise. In California Employment Stabilization Commission v. Bradley (1946), San Mateo Superior Court No. 38993, reported in 1946-48 Compilation of California Court Decisions Involving the California Unemployment Insurance Act at page 9, the court found that the deceased individual and his personal representative were the same employing unit. This was followed by Crook v. Department of Employment (1947), 78 Cal. App. 2d 308, 177 P. 2d 634, in which an appellate court held that the entry of a decree of distribution of a decedent's estate did not change the employing unit where there was no change in the business itself or in the relationship of the employees of the business to the employer.

This idea of the enterprise rather than the entity as affecting the determination of the employing unit was slow in gaining general acceptance. The Attorney General in his Opinion No. 46-348 (February 10, 1947), 9 Ops. Atty. Gen. 68 at page 70, explicitly stated that "We do not believe that the Ransohoff case is good law," and in State of California Department of Employment v. Fred B. Renauld and Co. (1950), 179 F. 2d 605, a federal appellate court refused to accept the Ransohoff and Barrett and Hilp cases as yet sufficiently defining the state law so as to require it to follow them. However, it recognized that it would have to follow them in the future if higher or more California court decisions should establish their rule as state law.

That establishment came two years later in McHenry's, Inc. v. California Employment Stabilization Commission (1952), 112 Cal. App. 2d 245, 276 P. 2d 76, wherein under circumstances similar to the Ransohoff case the joint owners of a restaurant business incorporated it. As almost in direct answer to the Attorney General and the federal court, the appellate court in the McHenry case referred to the "well reasoned opinion . . . in California Employment Commission v. Ransohoff, Inc. . . . . and Barrett et al. v. California Employment Commission. . . ." In holding that incorporation of the enterprise did not result in a change of employing unit, the appellate court said:

> "The meaning of the term 'employing unit' as used in the statute is that these terms refer to the unity of enterprise and are not concerned with the shifting of management or legal form of the same enterprise." (underscoring added)

The McHenry case was followed by Macintosh v. Director of Employment (1956), 145 Cal. App. 2d 628, 303 P. 2d 44, in which after the death of one of four partners, the business of the partnership was continued without change by the surviving partners, the widow of the deceased partner succeeding to his interest. The business was continued in exactly the same manner, except for this change in the identity of one of the partners. Following the principle of the McHenry case, the appellate court held that this change was one in form only rather than substance and that the new

partnership conducting its business in exactly the same manner as its predecessor was not a new employing unit.

Unity of enterprise was first recognized as the governing consideration in identifying the employing unit in cases like the foregoing where supposedly separate employers were situated successively to each other in the span of time. Yet even before the McHenry case, a similar result was reached in a case involving supposedly separate enterprises that were being carried on at the same time. This occurred in Bemis v. People (1952), 109 Cal. App. 2d 253, 240 P. 2d 638, a case involving a complex of 28 restaurants simultaneously doing business in the same manner and under the same trade name.

Each restaurant in the Bemis case was established in the form of an individual proprietorship or small partnership. However, in each instance, its operation was conducted under an identical package of five separate agreements entered into between its operator and one of three partnerships composed of Bemis family members. Both the object and the effect of this arrangement were to bind each restaurant operator so securely under the managerial control of the Bemis principals, that the whole complex functioned under their direction as a single business enterprise. An appellate court identified this "Bemis Enterprise" as an employer of the restaurant operators, saying that it is not form but substance that must govern for this purpose.

The unity of enterprise principle was also applied in Westwood Photo Lab. Inc. v. Department of Employment (1961), Sacramento Superior Court No. 122054, where the wholesale segment of a business was incorporated while its retail segment continued to operate as a partnership. Except for this technical change in form, the entire business continued to be conducted as it had been with the same management, employees, place and method of operation. Upon the authority of the McHenry and Macintosh cases, the court held that the simultaneously existing corporation and partnership were but one employing unit under the provisions of Unemployment Insurance Code section 135.

In each of the foregoing judicial decisions, the solution to the particular problem presented depended upon whether there was one employing unit or several. In each case except Renauld the court identified the employment unit upon the basis of a certain unity that it found present in the ownership and conduct of the enterprise. The mere legal form of organization was rejected as the governing consideration.

Legal form was the basis upon which a federal court did identify the employing unit in the Renauld case before any state appellate court had spoken on the subject. However, in its refusal to follow lower state court adjudications to the contrary, the federal court expressly recognized that under the conformity doctrine, it is bound to follow state law as defined by the decision of "a state appellate court in the line of the state appellate structure of the state." It would appear, therefore, that under this doctrine, even a federal court would now follow the decisions of our state appellate courts in the McHenry and Macintosh cases rather than its own decision in the Renauld case.

In any event, it is definitely our duty to do so, and in a series of decisions since 1958 we have been doing so. In Disability Decision No. 624, we recognized a solely owned corporation as being the same employing unit as the sole proprietorship whose business it carried on under the same name at the same location without any change of substance. In Tax Decision No. 2334, we recognized the principle of unity of enterprise, but found it inapplicable to a situation where the withdrawal of certain managing partners produced such a substantial change in the organization, business and even name of the old partnership that the new business enterprise which emerged had lost its essential unity with the old one. In Tax Decision No. 2354 we recognized that a corporation operating a new outlet in a chain of jewelry stores was part of the same employing unit as the other stores operated by a partnership where throughout the organization there was unity of trade name, ownership, management, purchasing, pricing, decision making, and personnel policies. In Tax Decision No. 2370, we recognized a lumber and building materials business as one employing unit where it was carried on as a single enterprise by a combination of three closely related corporations operating

under a common management from a common headquarters at which policy and decision making and most administrative activities were centered, but we did leave a fourth related corporation out of this unit where because of certain differences in managerial direction, talents utilized, and products produced, the separate form of organization gave an indication of a separate entrepreneural intent.

There are, of course, numerous older decisions of this Appeals Board which reflect the earlier emphasis on legal form that prevailed before the implications of the court decisions discussed above were fully realized. Included among these are Tax Decision No. 173 which was judicially overruled in the Barrett and Hilp case; Tax Decision No. 811 which was judicially overruled in the McHenry case; Tax Decision No. 1684 which was judicially overruled in the Macintosh case; Tax Decision No. 825 which was judicially overruled in Pacific Pipeline & Engineers v. Bryant (1958), San Francisco Superior Court No. 395821 upon the basis of the McHenry and Macintosh cases, and the tax decisions listed in Appendix "B" which were not judicially reviewed.

In general, this line of decisions emphasizing legal form can be traced back to our following Attorney General's Opinion No. 46-348 (February 10, 1947), supra, 9 Ops. Atty. Gen. 68. As we have pointed out above, that opinion is not in harmony with the unity of enterprise principle subsequently established by our appellate courts in the McHenry and Macintosh cases. Accordingly, the decisions listed in Appendix "B" do not reflect a correct application of the law, and so we specifically overrule them.

Any similar situations arising in the future should be completely reevaluated in the light of unity of enterprise being the governing consideration in the employing unit's identification. In this connection, however, it should be kept in mind in any such evaluation, that even in a unified enterprise, the separate character of entities may still be of real significance. The entity remains the basic unit of individual rights and obligations.

In the last analysis, the real responsibility for a tax can only be imposed in terms of entities. The

obligation of any administrative combination of separate entities must, of necessity, be viewed in the ultimate, in terms of being the joint; several; or, joint and several obligations (as the case may be) of the entities as its responsible elements (Civil Code section 1430). Thus separate entity may have an important bearing on many problems arising in connection with the administration of unemployment insurance taxes, such as (among other things) ultimate responsibility, collections, refunds, and the settlement and adjudication of controversies.

The type of organization described in the record before us is one in which many corporations existing as separate legal entities are bound together in their business relationship into a corporate family consisting of parent and subsidiaries. We must look not only into but beyond mere legal form and examine the conduct of the business activities from the point of view of determining how form has been utilized to create the functioning organization. We must then identify the employing unit in accordance with whether there is a unity in that functioning organization which causes it to be but a single enterprise.

This "enterprise" that we are seeking to identify is, according to Webster's Third New International Dictionary, a unit of economic organization or activity. According to the Macmillan Company's Systematic Glossary of Selected Economic and Social Terms (1963), it is to be distinguished from an "establishment" which is an individual local unit such as a factory, workshop, or mine engaged in one kind of activity or in a usual combination of activities (page 72). It is also to be distinguished from a "concern" which is an association of a number of enterprises of different branches, based upon common financial dependence upon a particular financial group (page 80).

We view an enterprise as a unit in which talents, resources, and other economic factors are brought together under central direction to produce a product or service in pursuit of a particular goal. A business enterprise is usually motivated by the pursuit of profit and the particular way in which it does so may be of significance in identifying the extent to which various

establishments should be included within a single enterprise. At the "enterprise" level, there is a unity in the direction of activity towards specific business goals that is not necessarily present in a "concern," yet there is not necessarily present in an "enterprise" the physical and geographical compactness of function which characterizes an "establishment."

Form, of course, is not absent from the makeup of an enterprise. Entrepreneurs do select their legal forms of organization with some bearing upon or relation to the functional activities involved. The important consideration in the identification of the employing unit lies in how form is utilized in the conduct of a functioning organization.

In most cases - probably the vast majority - some conventional legal form of organization is used to encompass the functional activities which constitute an enterprise. A deeper search into the substance of the arrangement ultimately reveals no substantial difference in the type of organization from that which its form initially indicated. It is really out of this general propensity of entrepreneurs that administrative emphasis on form of organization developed.

In some cases, however, a conventional legal form of organization is used to embody only a particular portion of the activities which constitute an enterprise. Frequently, establishments functionally united with other establishments into a single enterprise are separately incorporated. Code section 135 explicitly states that separate establishments are not separate employing units.

The stress which the courts have placed upon the identification of the employing unit on the basis of the unity of the enterprise is strongly rooted in the realities with which it has frequently been said that taxation is eminently concerned. To impose a tax upon the basis of mere form rather than the functioning organization in an economically competitive world can be tantamount to casting favor on some competitors at the

expense of working great hardships on others and on their employees as well. It has long been recognized that "the power to tax involves the power to destroy." M'Culloch v. The State of Maryland (1819), 17. U.S. (4 Wheaton) 316 at page 431, 4 L. Ed 579 at page 607.

The courts have made it clear in their interpretation of code section 135 that they do not believe that it was the legislative intent or purpose to define the employing unit merely by legal form. In the Crook case the court said in 78 Cal. App. 2d at page 313, 177 P. 2d at page 634 that:

> " . . . under the circumstances of this case it would appear that to sanction the collection of this additional assessment would come perilously close to approving the principle of double taxation."

Accordingly, where a unity of enterprise cuts across the lines of conventional legal forms, the tax administrator has to yield to any inconvenience involved in accepting the functioning organization as the subject of the tax.

It is the functioning organization, then, that becomes the "employing unit" under the provisions of code section 135. Such an organization may be an aggregative unit like an association or joint venture, and in the same way it may be an aggregation of corporate entities instead of individuals, in which event these entities are the legal persons who are to be recognized as the responsible elements of the unit. To regard corporations as such elements is not to disregard their separate legal entity, but merely to acknowledge the business use that is being made of it.

The type of organization reflected in the record before us is one that is used by many large enterprises. The most unique feature of this particular case is the very great number of separate corporations included in the group. We see no reason, however, why numerous corporations cannot so group themselves together as to function as a single enterprise, and, in fact, that appears to be the whole object behind the arrangement at hand.

While each corporation was, and remained, a separate legal person, it engaged in its business activities not merely as such but by joining with the other members of its corporate family in conducting its operations under common policies and practices established by common officers and directors elected for this common purpose. Together these corporations used a common business name, maintained a common headquarters, and shared common expenses in accordance with the particular contribution of each to the whole business. They operated under one symmetrical structure of managerial organization that reached all the way from the top down to the individual loan office.

The separate entity of the individual corporate members was used to further the business needs and purposes of the enterprise rather than to identify its scope or extent. For instance, the record indicates that it was sometimes used in order that the company might qualify for a loan license in certain states that require local incorporation for this purpose. Whatever happened to be the specific business, financial, or even tax reason in a particular situation that prompted the individual corporation to contribute its character as a separate entity to the enterprise, it was always an organization-oriented one.

It appears from the record before us that the Seaboard Finance Company was actually an organized grouping of 501 separate legal persons into one corporate family which was engaged in one business enterprise operated under one managerial structure. As such, it must be considered as one "employing unit" within the meaning of that term as it is defined in code section 135. This unit must then be identified as the "employer" of the individuals in question under the provisions of code section 675. In re Technicon Cardiograph Corp. (1954), 285 App. Div. 193 at page 194, 136 N.Y. Supp. 2d 268 at page 269.

Our conclusion in regard to the unity of enterprise issue makes it unnecessary for us to consider the petitioners' alternative contentions.

DECISION

The decision of the referee is reversed. The petitions are granted.

Sacramento, California, August 6, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

LOWELL NELSON

JOHN B. WEISS